

September 22, 2021

Marlene Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

**Re:** *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket No. 16-155*

Dear Ms. Dortch:

On September 20, 2021, I spoke with David Strickland, Acting Legal Advisor, Consumer, Enforcement, and International to Acting Chairwoman Rosenworcel, and separately with William Davenport Chief of Staff & Senior Legal Advisor for Wireless and International to Commissioner Starks, and Diane Holland, Legal Advisor for Media and Consumer Protection to Commissioner Starks. On September 21, 2021, I spoke with Erin Boone, Wireless Advisor to Commissioner Simington. All conversations concerned the *Draft Second Report and Order* in the docket above, which is scheduled for a vote at the Commission's September Open Meeting.<sup>1</sup>

In the meetings I raised three points. First, USTelecom members greatly appreciate that the *Draft Order* recognizes that the national security review process is only warranted for the buyer in any communications-related transaction, not the seller.<sup>2</sup> This change will help to alleviate unnecessary burdens on the selling party and allow the Committee to focus its review on the relevant party.

Second, I reiterated the importance of putting a timeframe of relevance on the Committee's request for information regarding whether the Applicant has ever been subject to any criminal, administrative, or civil penalties<sup>3</sup> or even just investigations into potential violations.<sup>4</sup> Some USTelecom members are amalgamations of companies that date back 100 years, working with many different state and local regulatory entities along the way. It is very difficult to report these types of administrative and civil penalties with certainty for actions dating so far back. Nor is it clear how very dated responses to the question are relevant to the Committee's review. For example, would the Committee really be interested in a state service quality penalty, or even just investigation, from the 1960s? The *Draft Order* found a ten-year timeframe as a reasonable limitation on the data request for which parties had been involved with

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<sup>1</sup> *In re: Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Draft Second Report and Order*, IB Docket No. 16-155, FCC-CIRC2109-08 (Sept. 2021) (*Draft Order*).

<sup>2</sup> *Id.* at para. 19.

<sup>3</sup> *Id.* at para. 36.

<sup>4</sup> See e.g., *id.* at Atts. A & B, Question 14, Att. C, Question 19, and Att. D, Question 20).

previous applications to the Commission.<sup>5</sup> The Commission should also institute a ten-year timeframe with respect to reporting of investigations and penalties.

Finally, I requested the Commission limit the scope of questions related to providing the personal information of those non-U.S. Individuals with physical access to “Physical facilities and/or equipment under the Applicant’s control.”<sup>6</sup> Taken to its extreme, the question could extend to anyone who works in a company office building performing any function. USTelecom requests that the scope of the question be narrowed to those with access to actual telecom network facilities, not just general office facilities. The Application for a Submarine Cable Landing License transfer contains a definition for “Domestic Communications Infrastructure” that does not exist in all of the applications, but importing this concept in the question, even if not the exact term, would much better limit the scope of the question to relevant national security concerns.<sup>7</sup> The Commission took steps to limit the scope of the question related to broadcast facilities and should do so for other such applications as well.<sup>8</sup> This would reduce burdens on applicants and also provide much more relevant information for the Committee to consider.

Please contact the undersigned if you have any questions.

Sincerely,

/s Mike Saperstein/

Mike Saperstein  
Vice President, Strategic Initiatives & Partnerships  
USTelecom—The Broadband Association  
(202) 365-7225  
[msaperstein@ustelecom.org](mailto:msaperstein@ustelecom.org)

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<sup>5</sup> *Id.* at para. 35 (“The ten-year time limit will reduce the burdens on the applicant while providing the Committee sufficient relevant information concerning recent Commission filings it requires for its review.”).

<sup>6</sup> *See, e.g. id.* at Att. A, Standard Questions for an International Section 214 Authorization Application, Question 21(a).

<sup>7</sup> *Id.* at Att. C, pg. 4 (“Domestic Communications Infrastructure . . . means: (a) any portion of the cable system that physically is located in the United States . . . including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of COTS software used for common business functions, e.g., MS Office) used by or on behalf of the Applicant to provide, process, direct, control, supervise, or manage domestic communications; and (b) Network Operations Center (NOC) facilities.”).

<sup>8</sup> *Id.* at paras. 37-38.